IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, GENERAL JURISDICTION DIVISION 10, HELD IN ACCRA ON WEDNESDAY, THE 8TH OF MARCH, 2023 BEFORE HIS LORDSHIP JOHN EUGENE NYANTE NYADU, J.

SUIT NO. GJ/1070/2022

AGRICULTURAL DEVELOPMENT BANK PLC ....APPLICANT

VS.

1. THE RIGHT TO INFORMATION COMMISSION

2. CENTRE FOR DEMOCRATIC EMPOWERMENT.. RESPONDENTS

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HIGH COURT 04/04/2023
GENERAL JURISDICTION, LCO-ACCRA

RULING

By an Originating Motion on Notice **under subrule (2) of rule 1 of Order 19 of the High Court (Civil Procedure) Rules, 2004 (CI 47)**, the applicant has brought the instant application against the respondents for the following reliefs:

(a) Declaration that sections 28 and 52(1) of the Public Procurement (Amendment) Act, 2016 (Act 914) which place strict restrictions on access to information by parties not directly involved with

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procurement contracts is in conflict with section 85 of the Right to Information Act, 2019 (Act 989) which permits or purports to grant free access to anyone seeking information to procurement contracts save only as the same is expressly forbidden by law;

(b) Declaration that upon a proper application or interpretation of the *generalia specialibus non derogant rule* of interpretation, which literally means that where two enactments of the same rank are in conflict and one is a specific enactment and the other is a general enactment, the specific enactment overrides the general enactment, any request for information on procurement contracts can and must be made pursuant only to sections 28 and 52(1) of the Public Procurement (Amendment) Act, 2016 (Act 914) and not the Right to Information Act, 2019 (Act 989), further, or in the alternative;

(c) The Right to Information Commission (thereinafter "Respondent/Commission) by its decision dated 1st June, 2022, subject matter of the instant suit, misconstrued and misapplied the true intendment and principle in the *Generali specialibus non derogant* rule of interpretation when it purported to compel the Applicant to furnish the Interested Party with information relating to the Applicant's procurement contracts.

(d) An order to set aside the said decision of the Respondent/Commission dated 1st June, 2022.

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(e) A further order that pending the hearing and determination of the instant action, the Applicant may be relieved of the need to comply with the order of the Respondent/Commission dated 1st June, 2022.

(f) Declaration that the failure of Parliament to provide a clear path for parties aggrieved by decisions of the Respondent/Commission to ventil0ate their grievances, including a clear path for the exercise of an appeal or challenge by an aggrieved party makes the Right to Information Act, 2019 (Act 989) vague, defective and unsatisfactory, requiring an immediate amendment of Act 989 to address that issue;

(g) Declaration that the use or adoption by Respondent/Commission in its decision dated 1st June, 2022, of pejorative terms and expressions to describe the Applicant such as that the Applicant *"defiantly refused to furnish the Commission,* or that the Applicant had *"flagrant disregard for (its) obligations under Act 989"* as a basis for or in connection with the Respondent's imposition of an administrative penalty of GH¢300,000.00 against the Applicant were highly unjustified and uncalled for, having regard to the fact that the Applicant was only exercising its rights under and within the law, further, or in the alternative;

(h) Declaration that the use or adoption by the Respondent/Commission of such pejorative language in reference to the Applicant is an attempt to bully the Applicant and other parties who may appear before the Respondent/Commission and/or

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discourage them from exercising their right under law; in the still further alterative;

(i) Declaration that the award or imposition by the Respondent/Commission of the sum of GH¢300,000.00 is arbitrary and without justification in law and violates the constitutional duty imposed on all administrative bodies pursuant to Article 23 of the 1992 Constitution;

(j) Declaration that by reason of its composition the Applicant is not a public institution within the meaning and intendment of Act 989 and/or otherwise amenable to the Right to Information Act, 2019 (Act 998) with regard to procurement contracts; and

(k) Any` other relief as the justice of this case may seem fit.

Upon service of the application on the respondent, the respondent filed an affidavit in opposition on 18th of August, 2022 vehemently opposing the application.

The respondents objected to the procedure adopted by the applicant because to them, it does not invoke the jurisdiction of the court. They submit as follows:

"My Lord, the effect of section 36 (1) of the Right to Information Act, 2019 (Act 989) is to require the Applicant herein to initiate the instant action by way of judicial review under Order 55 of C.I 47. According to section 36 (1) of Act 989:

"Where an applicant is refused access to information by a public institution

(a) Because the disclosure will be

(i) prejudicial to the security of the State, or

(ii) injurious to the public interest, or

(b) for any other reason,

the applicant may apply to the High Court for a judicial review of the decision."

It is important to point out that, under Act 989, the requirement for action to the High Court to be initiated by way of judicial review is put on the applicant for information. But since a dissatisfied public institution cannot be debarred from lodging a complaint with the High Court against the decision of the Right to Information Commission simply because there is no mention of a public institution filing an application for judicial review, we argue, respectfully, that the requirement for application to the High Court for judicial review should be applied ***mutatis mutandis*** to a dissatisfied public institution.

Indeed, this was the posture adopted by the High Court presided over by Her Ladyship, Justice Gifty Agyei Addo, J in the unreported case of the ***REPUBLIC V RIGHT TO INFORMATION COMMISSION; EX PARTE MINERALS COMMISSION (EVANS AZIAMOR – MENSAH, INTERESTED PARTY), SUIT NO. CR/0679/2021 dated 17th March 2022.***

Pages 17 – 18: reads ***"The question I pose is whether the Applicant Commission herein [The Minerals Commission] being dissatisfied with the decision of the Respondent [The Right To Information Commission] is disabled from coming to this court for judicial review.... In sum, the Respondent, a quasi-judicial body that took the decision which the Applicant herein is aggrieved by is amenable to the supervisory jurisdiction of this court."***

A careful examination of the Applicant's reliefs IV – X will reveal that the Applicant is basically asking the Honourable Court to quash the decision of the Respondent Commission. Therefore, the right procedure to this Honourable Court to quash the

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Respondent Commission's decision is by way of judicial review. Failure to do so makes the instant application incompetent. The Applicant should have applied for judicial review under Order 55 of C.I 47; and not come by way of an application under Order 19 of C.I 47, hence the Applicant is not properly before the Honourable Court to be seized of jurisdiction over this matter. Indeed Order 55 rule (1) of C.I. 47 provides that,

> *"An application for*
>
> (a) *...certiorari... shall be made by way of an application for judicial review to the High Court."*

The Applicant herein is before the Honourable Court under Order 19 rule 1 (2) of C.I. 47, which gives a basis for originating an action before the Court through an application. This is a general procedure for making an application to the Court, but it is to be applicable where an enactment in question has not specified the procedure or route to be taken. As already mentioned, Act 989 specifies clearly that an application for judicial review is the procedure to be adopted when it comes to dissatisfaction with a decision of the Right to Information Commission. This procedure specified under section 36 (1) of Act 989 finds buttress under Order 55 rule (1) of C.I. 47, particularly since the gravamen of the Applicant's reliefs sought against the Respondent Commission is a quashing of the Respondent Commission's decision against the Applicant.

My Lord, the eminent jurist, S.A. Brobbey, JSC (rtd) in his book "**Practice & Procedure in the Trial Courts & Tribunals of Ghana (2nd ed), 2011 at page 31** stated that the jurisdiction of a Court is the authority of that court to entertain or decide a case. It connotes the limit or extent of the power of the court.

The Supreme Court deciding on procedure in ***BOYEFIO V. NTHC PROPERTIES LTD (1997-98) 1GLR 768-786*** held at holding 3 as follows:

The law was clear that where an enactment had prescribed a special procedure by which something was to be done, it was that procedure alone that was to be followed.

My Lord, to buttress the above position, Acquah JSC (as he then was), in ***FRIMPONG V. NYARKO [1999-2000] SCGLR 429 AT P. 442,*** had this to say in relation to non-compliance with a rule of civil procedure:

> *"Again, where the error is fundamental or goes to the jurisdiction of the court, thereby exposing the court's incompetence or lack of jurisdiction in the matter in which the said error was committed, the court is incompetent to correct or waive such an error, as a court of law has no authority to grant itself jurisdiction in matters where the relevant statute does not confer such power.*

Respectfully, My Lord, commenting on the above profound statement of law by his Lordship Acquah, JSC (as he then was), the Supreme Court, speaking through Dr. Date-Bah, JSC (rtd), had this to say in ***REPUBLIC V. HIGH COURT, ACCRA; EX PARTE: ALLGATE COMPANY LTD (AMALGAMATED BANK LTD INTERESTED PARTY) [2007-2008] SCGLR, AT PAGE 1050:***

> *"The logical strength of this argument by Justice Acquah is irresistible… It is difficult to see how any language in a civil procedure rule, can be interpreted to overcome or waive a High Court's actual lack of jurisdiction. That would imply giving the court the right to roam around, like a mid-field "libero" in footballing terms, unconstrained by the fetters of jurisdiction, doing as it pleases. That is inconceivable and would be potentially unconstitutional.*

Similarly, My Lord, Atuguba, JSC (rtd) delivering the decision of the court on procedure in ***OPPONG V. ATTORNEY-GENERAL AND OTHERS [2000] SCGLR AT PAGE 280*** also stated that:

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> *Where the step by a party to proceedings before a court is fundamentally wrong, such error is not within the purview of the rule and cannot be waived. One cannot waive a nullity.*

It is trite learning that when a statute has provided for a manner or procedure by which an action should be taken, another manner or procedure cannot be used. We, respectfully, urge persuasion of the judgment of Her Ladyship, Justice Gifty Agyei Addo, J on this Honourable Court.

My Lord, taking persuasion from the decision of Her Ladyship Justice Gifty Agyei Addo, J in the *Ex parte Minerals Commission* ***(Judgment of the High Court dated 17th March, 2022 (unreported))*** if the Applicant herein was enjoined by section 36 (1) of Act 989 to come before the Honourable Court by way of judicial review application, then by not coming within 21 days after the decision of the Respondent Commission sought to be quashed, the Applicant is time-barred from seeking to quash the decision of the Respondent Commission. This is because section 36 (2) of Act 989 requires an application for judicial review to be filed within 21 days after the decision of the Respondent Commission. This is what section 36(2) says:

> *"The application for judicial review shall be lodged within twenty-one days after refusal of the application."*

The applicant in its response submits as follows:

"Jurisdictional Objection.

1.1 In paragraphs 32, 33 and 35 of its affidavit in opposition and its Written Address, the Respondent takes the view that *"it is misleading for the Applicant to suggest that Act 989 failed to provide an avenue for the Applicant to ventilate its grievances against the decision of the Respondent. On the contrary, the law provides for a judicial review application against the decision of the*

Respondent by affected persons reading together sections 35 and 66 of Act 989 (and that) when an enactment provides for a procedure by which an action must be taken same"

1.2 On the basis of this foundation, the 1st Respondent develops a full blown argument in its Written Address to the effect that the entire application is misconceived and ought to be struck out as incompetent, the Applicant having, allegedly, resorted to an alien procedure to invoke the Court's jurisdiction.

1.3 The Respondent submits on the basis of the judgment of the High Court in the case of that since the Court took the view that the procedure adopted by the applicant therein, namely, judicial review, to invoke the court's jurisdiction was right, the Respondent develops a whole jurisprudence to extrapolate from that finding a universal theory that any and all challenges to the Respondent's decisions can only be challenged by resort only to judicial review application.

1.4 By a further extension of that logic, the Respondent contends that since that is the procedure provided by that judgment, any departure from that procedure should invite sanctions from the court, namely, a striking out of the action. But how right is the Respondent?

2.0 *The Applicant's response: The principle of ubi jus ibi remedium",*

2.1 By resort to this winding argument to reach its conclusion, the Respondent rather confirms the Applicant's observation that in passing Act 989 the legislature failed to provide any avenue whatsoever to persons who would

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be aggrieved by the Respondent's decisions to ventilate their grievances in any form as well as forum. This is what we call a lacunae in the law. A lacunae, because the first rule of equity is founded in the latin maxim *"ubi jus ibi remedium"*, meaning that equity will not suffer a wrong to be without a remedy. The idea expressed in this maxim is that no wrong should be allowed to go unredressed if it is capable of being remedied by courts of justice, and this really underlies the whole jurisdiction of equity.

2.2 **However, in deciding to go to court, is the aggrieved party limited to only one procedure, namely, by resort to a judicial review, as contended by the Respondent? Also, is it true that failure to resort to judicial review to challenge the Respondent's decision is fatal? (Emphasis mine)**

3.0 *Procedure for invoking the jurisdiction of the High Court where a statute provides a clear procedure.*

3.1 The law is clear that where an enactment had prescribed a special procedure by which something was to be done, it was that procedure alone that was to be followed **(See *Boyefio v. NTHC Properties (1996-97) SCGLR 531 Holding (5))*.** Also, where a statute has provided a right with remedies and has also prescribed the procedure to follow in order to secure the right or remedy, it is only that procedure which must be followed. The point was made clear by the Supreme Court in the case of ***Tularley v. Abaidoo* (1962) 1 GLR 411** and further endorsed in the case *Boyefio v. NTHC Properties Ltd* ***(1996-97) SCGLR 531 at 546." - Per Benin JSC.***

3.2 It is however expressly denied that Act 998 provided a procedure any procedure for invoking the jurisdiction of the High Court to seek

a remedy in any way. The claim therefore that the judgment of the High Court in ***ex parte Mineral's Commission*** case by which the High Court endorsed judicial review as the procedure used by the applicant therein to invoke its jurisdiction was not based on an interpretation of any section of Act 998[SIC]. It was only an attempt to provide a guide that by reason of the plaint before the Court, the applicant could not be bereft of remedy and could access that remedy by a judicial review application, Nor do we consider it legitimate to argue that by opening that avenue, all future applicants should come by that route only. On the contrary there were situations that the Court did not nor was it obliged to comment upon.

4.0 Procedure for invoking the jurisdiction of the High Court provides a remedy but no clear procedure.

4.1 One of such procedures is offered by the rules of Court. Order 19 rule 1 (2) of the High Court (Civil Procedure Rules), 2004, C.I. 47, expressly provides, as follows:

"(2) Proceedings by which an application is to be made to the court or a judge of the court under any enactment shall be initiated by motion and where an enactment provides that an application shall be made by some other means, an application by motion shall be deemed to satisfy the provision of the enactment as to the making of the application."

4.2 This refers to cases or situations where the statute, like the Companies Act, provides a remedy to a party but does not indicate the procedure by which the party can invoke the jurisdiction of the Court. Our courts have always illuminated our path in such situations. The Privy Council decision in

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***Jaundoo v Attorney-General of Guyana* [1971] AC 972** was referred to with approval by Francois JSC in his opinion in the case of ***Darko v Amoah* (1989-90) 2 GLR 214 SC wherein, at page 219**, where His Lordship said " *In any event it is elementary that where the procedure for utilizing a substantive legal provision has not been spelt out, a litigant is entitled to adopt the nearest, reasonable mode of utilizing the right accorded by the law*

4.3 This was expounded by Acquah JSC in the case of ***Edusei v Attorney-General* [1998/99] SCGLR 753 @ 797** where His Lordship stated:

"the legal position therefore is that where an enactment confers an actionable right on a person, but there are no rules specifically provided for vindicating that right because either that enactment provided none, or it rather directed an authority to make the said rules which are yet to be made, an aggrieved person is entitled to adopt the nearest reasonable procedure of utilizing the right accorded by the law – a procedure which must be such as to give notice to the person or legally authorized authority against whom redress is sought and afford to him or it an opportunity of putting his side of the case. For, where there is an actionable right, there must be a remedy for vindicating that right."

5.0 What happens when there is a deviation from the prescribed procedure?

5.1 This issue arose In the case of *Awuni v WAEC* where the plaintiff issued an originating notice of motion instead of a writ of summons in invoking the jurisdiction of the Court. The matter came up before the Supreme Court for consideration. Justice Dr. Twum delivered himself, thus:

"I *can conceive of no injustice that was caused to the council by the procedure adopted by the applicant. Consequently, I hold that the procedure adopted by the applicant was not fatal to his action. Per Date-Bah JSC: I have no hesitation*

in holding that "apply to the High Court for redress" in article 33(1) is to be construed as including applying by way of an originating motion, notwithstanding the express language in the High Court Rules to which the respondent has drawn this court's attention, to the effect that unless a specific other mode of originating an action is specified in the Rules, a writ of summons is to be the mode of initiating an action. In my view, until the Rules of Court Committee has proscribed a particular mode of application under article 33(1), applicants should be given latitude as to how to invoke the jurisdiction of the High Court. This is certainly in consonance with the legal position formulated by Acquah JSC (as he then was) in **Edusei (No 2).. *[2003-2004] SCGLR 471 @ 476*.**"

6.0 *Procedural non-compliance in the interest of justice.*

6.1 Indeed, the Supreme Court has not limited itself to making that clear finding. In the same suit, Prof. Date-Bah continued, as follows:

"This powerful dissent had an influence in the rule being changed to remove the self-imposed helplessness of the judges in the face of procedural nullities. Order 2 r 1(1) of the English Rules of the Supreme Court was enacted in 1964 to empower judges to be able to cure procedural non-compliance in the interest of justice. Speaking about the effect of this change, Lord Denning MR said in ***Hardness v Bell's Asbestos & Engineering Ltd* [1967] 2 QB 729 @ 735-736**" *this new rule does away with the old distinction between nullities and irregularities. Every omission or mistake in practice or procedure is henceforward to be regarded as an irregularity which the court can and should rectify so long as it can do so without injustice"*

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6.2 Further, in the case of ***Republic v High Court Accra; Ex Parte Algate Co. Ltd [2007-2008] SCGLR 1041 @ 1043,*** Dr. Date-Bah in delivering the unanimous decision of the Supreme Court in which the Court had been invited to dismiss an application for certiorari on the basis of non-compliance with the rules of court which the applicants considered going to jurisdiction, stated as follows:

"Non-compliance is to be regarded as an irregularity that does not result in nullity, unless the non-compliance is also a breach of the Constitution or of a statute other than the rules of court or the rules of natural justice or otherwise goes to jurisdiction".

6.3 In the case of ***Boakye v. Tutuyehene [2007-2008] SCGLR 970 @ 980,*** the Supreme Court unanimously held per Dr. Twum, JSC, as follows:

"the new order 81 has made it clear that perhaps apart from lack of jurisdiction in its true and strict sense, any other wrong step taken in any legal suit should not have the effect of nullifying the judgment or the proceedings. ***This means that the principle stated in Mosi v. Bagyina (1963) 1 GLR 337, has been rendered otiose......*** *This new approach to non-compliance with rules of procedure is an advance in that it removes the helplessness of the courts in the fact of non-compliance that is regarded as a nullity. According to the principle of ex nihilo nihil fit (or nothing can come out of nothing), the courts had previously been unable to cure non-compliance that had been held to be a nullity. With almost all non-compliance now to be regarded as mere irregularities that the court can either cure or use as a ground for setting aside the order or proceedings, the court has much more flexibility to do justice...."*

6.4 Not surprisingly, Gbadegbe JSC in the case of ***Ahinakwa II v Okaidja III***, quoted with approval the judgment of Stamp J in the case of **Re Deadman, Smith v. Garland** *[1971] 2 All E.R 101*, as follows: *"the whole point of insisting that certain proceedings, and more particularly proceedings involving or based on an allegation of fraud, shall be begun by writ is to ensure that the procedure consequent on the issue of a writ involving pleadings, discovery and so on is followed. If I allowed the amendment which is sought on the terms of the action continuing as if it had been commenced by writ, I would accomplish precisely that result.*

7.0 Concluding the first point

7.1 We have clearly shown or demonstrated that the Applicant's action is not covered by statute nor by any rule of procedure. It is a pure case where the Applicant has a cause of action, which the Court has power to remedy, but without any clear procedure provided by law. It cannot be argued that the procedures offered by a writ of summons, judicial review and originating notice of motion are the same or can have the same consequences (*Among other reasons, different time limits operate in invoking the jurisdiction of the High Court)*. The resort to the use of any one may as well achieve the desired effect of giving appropriate remedies as desired by the aggrieved party.

7.2 For now, we believe that it is a choice on the part of the applicant which procedure to resort to. Whichever choice the Applicant makes cannot have the effect of obscuring the remedy sought or the case the Respondent has to answer at the hearing. The Respondent can also

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> not make a genuine complaint that it has suffered any inconvenience or hardship in consequence. More importantly, the choice of procedure does not breach any statute or rule of practice and, even if it is, the case law shows that this Court has power to proceed with the substantive matter.".

An appellate jurisdiction of a court is a creation of statute, in the absence of which the applicants have no right to come to this court. I have perused the provisions of the **Right to Information Act, 2019 (Act 989)** and did not see any provision that entitled the applicant to bring the instant application. Counsel for the applicant has submitted that there is a lacunae in the law because it does not provide an avenue for redress when an institution to which a request is made for information is dissatisfied with a decision of the Right to Information Commission. This is because **section 36 of Act 989** only provides for an applicant who is dissatisfied with a decision of Commission to seek redress by applying to the High Court for Judicial Review.

Indeed, there are no express provisions in **Act 989** on the procedure to seek redress where a person other than the person who seeks information from a public institution is aggrieved by a decision of the Commission. This however is a product of the elliptic drafting style adopted in the drafting of the legislation bearing in mind the fact that as a body that performs quasi-judicial functions, any decision of the Right to Information Commission exercising its quasi-judicial function is, in

accordance with **Article 141 of the Constitution,** subject to the supervisory jurisdiction of the High Court. It is also to be borne in mind that Parliament is presumed to know the state of the law and therefore adopting this style is not out of place. It is unfortunate that both counsel did not address the court on this important Constitutional provision.

Counsel for the respondent submits that the applicant has brought the instant application by use of a wrong procedure and that even though **Act 989** does not expressly state a procedure where an institution is aggrieved by a decision of the Commission, a purposive interpretation of **Act 989** suggest the procedure to be by Judicial Review. This invitation to construe Act 989 purposively in this context runs contrary to the *expressio unius est exclusio alterius* rule (a common law principle for construing legislation which holds that a syntactical presumption may be made that an express reference to one matter of the same category excludes other matters of that category) and therefore will be declined. Counsel went further to suggest that if that procedure is adopted, then the applicant was out of time when it brought the instant application because **subsection (2) of section 36 of Act 989** require such applications to be brought to the High Court within twenty-one (21) days after the date of the decision sought to be reviewed, which was not the case in the instant application. Counsel for the respondents therefore prayed the court to dismiss the instant application for its incompetence because the procedure adopted is wrong and that by the appropriate procedure the applicant was out of time when it brought the instant application.

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In substance the reliefs claimed by the applicant as per its application are in the nature of judicial review. This court has stated in other decided cases that, bringing an application before this court without stating the exact order under which the application is brought is not fatal to the application so long as same can be deduced and situated under a known order of the procedural rules of this court. In the case of **Atta and Ano. vs. Mohamadu [1980] GLR 862** the court stated per holding 1 as follows:

> "in asking for an order from the court a party was not bound to state the Order or the rule under which he proposed to move. The use of a particular word such as "review" in the instant case, did not preclude the court from doing what it had power to do provided the relief sought was couched in sufficiently clear words to enable the court to appreciate what was required of it. In re Barker's Estate: Hetherington v. Longrigg (1878) 10 Ch.D. 162 at pp. 165 and 166 cited.".

Furthermore in the case of **Kumah vs. Bart-Plange [1989-90] 1 GLR 119** holding 1 **Kpegah J** (as he then was) stated as follows:

> "(1) an omission to state the rule under which one was proceeding was not fatal to an application, provided it was permissible under any of the rules of court or could be said to be a recourse to the inherent jurisdiction of the court. Nevertheless, since the circumstances under which judgment could be obtained without going through a full trial were different in each case it was most desirable that a party made clear to the court the nature of his prayer or application. That could be done by referring to the rules under which one was proceeding and also by heading the motion paper correctly, indicating what

> one was asking for and the ground for the relief being sought. In the instant case, the plaintiff failed to do any of the above and since the application could not be said to be a prayer addressed to the inherent jurisdiction of the court it had to be dismissed. Shardey v. Adamtey; Shardey v. Martey (Consolidated) [1972] 2 G.L.R. 380 at 386-387, C.A. explained.

It is clear from these two decisions that if the applicant in the instant suit had not stated categorically the jurisdiction of this court it sought to invoke (i.e. **Order 19 of CI 47**), the court would have been in its right to ascertain the order under which the instant application is brought from the reliefs claimed and depositions in support of the reliefs claimed so long as same can be placed under the civil procedural rules of this court.

Invoking the supervisory jurisdiction of this court in the circumstances of the instant suit is by settled practice, an application for Judicial Review under **Order 55 of C.I. 47,** and the non-compliance in the instant suit is not only a non-compliance with the civil procedural laws of this court but also a non-compliance with the **Constitution.** It should be noted by counsel for the respondents that the avenue for Judicial Review open to the applicant does not flow from **Act 989** but from **Article 141 of the Constitution** and therefore **subrule (1) of rule 3 of Order 55 of the High Court (Civil Procedure) Rules, 2004 (CI 47)** is what applies. This provision requires an application for Judicial Review to be brought not later than six months from the date of the decision sought to be reviewed. For that reason, the applicant was not out of time save the adoption of a wrong procedure which in the instant suit is fatal because the applicant

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expressly stated the order under which the instant application is brought instead of leaving same to be deduced by the court.

Much as the instant application would have presented a fine opportunity for me to share my thoughts on the legal issues raised, I am constrained by the non-compliance with the Constitutional requirement on the part of the applicant to bring the instant application by way of a Judicial Review and therefore cannot consider the application on its merits.

Accordingly, I decline jurisdiction in this suit and the application is accordingly dismissed.

No award as to cost.

(SGD.)

JOHN EUGENE NYANTE NYADU

JUSTICE OF THE HIGH COURT

COUNSEL: **KWEKU Y. PAINTSIL WITH FELIX AGYEKUM BOATENG FOR THE APPLICANT**

ANGELA KAFUI ATTAKPAH WITH AMOS ANOKYE- KUSI FOR THE RESPONDENTS

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